



BellSouth Telecommunications, Inc.

333 Commerce Street
Suite 2101
Nashville, TN 37210-3300

joelle.phillips@bellsouth.com

REC'D TN
REGULATORY AUTH.

Joelle J. Phillips

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OFFICE OF THE

EXECUTIVE SECRETARY

March 26, 2001

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Second Complaint of Discount Communications, Inc. Against
BellSouth Telecommunications, Inc.*
Docket No. 00-01151

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of an Order Establishing Modified Escrow Agreement as directed by the Hearing Officer in this matter on March 21, 2001. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Joelle Phillips

JP/jem

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.*

Docket No. 00-01151

ORDER ESTABLISHING MODIFIED ESCROW AGREEMENT

During the status conference of January 31, 2001, the Hearing Officer requested that Discount Communications ("Discount") and BellSouth Telecommunications, Inc. ("BellSouth") prepare an Escrow Agreement incorporating the decisions of the Hearing Officer with respect to the modified amounts to be paid into escrow by Discount for BellSouth (the "Modified Escrow Agreement"). The parties were unable to reach an agreement regarding various terms, and on March 21, 2001, an additional status conference was held. At the March 21, 2001 status conference, the Hearing Officer ordered that the terms and conditions of the Modified Escrow Agreement shall be the following:

1. BellSouth will retain the \$50,000 deposit Discount has previously paid to BellSouth.
2. Discount agrees that on March 22, 2001, it will begin paying, pursuant to the terms of the existing escrow arrangement with the Waring Cox law firm, the amount of \$2800 each calendar day to BellSouth by 5:00 p.m., with weekend payments being made by consolidated payments each Monday for Saturday and Sunday, until such time as the formal order establishing the Modified Escrow Agreement is approved by the Hearing Officer and the Modified Escrow Agreement is established.

3. The fund established by this Modified Escrow Agreement (the "Modified Escrow Account") shall be established at the Main Branch of AmSouth Bank, 315 Union Street, Nashville, Tennessee. Brenda Landers, Vice President, shall serve as escrow agent. AmSouth will provide its escrow services for a one-time flat fee of \$1,500, which BellSouth will pay in full. Any and all other fees for escrow services shall be shared equally by the parties. Payments into the Modified Escrow Account may be made by wire transfer to AmSouth Bank Trust Department, Birmingham, Alabama, ABA #062000019, Credit to Account No. 00063835, or by delivery of payment to any AmSouth Bank Branch in Tennessee.

4. In recognition of AmSouth's customary requirements to provide escrow services, the parties agree that the following rights and duties shall apply to AmSouth as escrow agent:

(a) The Escrow Agent shall invest the Escrowed Assets at the written request of the parties hereto. Said written request shall specify the type of investment to be made, the maturity date, and the principal amount to be invested. The Escrow Agent shall not be liable for losses on any investments made by it pursuant to and in compliance with such instructions.

(b) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth in this Escrow Agreement and may rely and shall be protected in acting or refraining from acting on any instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be liable for any action taken or omitted by it

in good faith and believed by it to be authorized hereby, nor for action taken or omitted by it in accordance with the advice of its counsel.

(c) Should any controversy arise between the undersigned with respect to this Escrow Agreement or with respect to the right to receive the Escrowed Assets, Escrow Agent shall have the right to institute a bill of interpleader in any court of competent jurisdiction to determine the rights of the parties. Should a bill of interpleader be instituted, or should Escrow Agent become involved in litigation in any manner whatsoever on account of this Escrow Agreement or the Escrowed Assets made hereunder, the undersigned hereby bind and obligate themselves, their heirs and legal representatives, to pay Escrow Agent, in addition to any charge made hereunder for acting as Escrow Agent, reasonable attorney's fees incurred by Escrow Agent, and any other disbursements, expenses, losses, costs and damages in connection with and resulting from such litigation.

(d) The Escrow Agent shall have no liability under, or duty to inquire into the terms and provisions of the Agreement, and it is agreed that its duties are purely ministerial in nature, and that the Escrow Agent shall incur no liability whatsoever except for the willful misconduct or gross negligence so long as it has acted in good faith. The Escrow Agent shall not be bound by any modification, amendment, termination, cancellation, rescission or supersession of this Escrow Agreement unless the same shall be in writing and signed by all of the other parties hereto and, if its duties as Escrow Agent hereunder are affected thereby, unless it shall have given prior written consent thereto.

(e) The Escrow Agent may at any time resign hereunder by giving written notice of its resignation to the other parties hereto, at their addresses set forth in Paragraph 8 hereof, at least 10 days prior to the date specified for such resignation to take effect, and upon the effective date of such resignation, the Escrowed Assets hereunder shall be delivered by it to such persons as may be designated in writing by the other parties executing this Escrow Agreement, whereupon all the Escrow Agent's obligations hereunder shall cease and terminate. If no such person shall have been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate. The Escrow Agent's sole responsibility thereafter shall be to keep safely all Escrowed Assets then held by it and to deliver the same to a person designated by all the other parties executing this Escrow Agreement or in accordance with the directions of a final order of judgment of a court of competent jurisdiction.

(f) The parties agree to indemnify, defend and hold the Escrow Agent harmless from and against any and all loss, damage, tax, liability and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, including the legal costs and expenses of defending itself against any claim or liability in connection with its performance hereunder.

(g) The parties shall pay to the Escrow Agent its fees for the services rendered by it pursuant to the provisions of this Escrow Agreement and will reimburse the Escrow Agent for its reasonable expenses, including reasonable attorney's fees and expenses, incurred in connection with the performance by it of

such services. All such expenses and fees will be shared equally by the parties with the sole exception of the \$1,500 flat fee referenced in Paragraph 3, which BellSouth will pay in full.

(h) Escrow Agent is hereby given a lien on all Escrowed Assets for all indebtedness that may become owing to Escrow Agent hereunder, which may be enforced by Escrow Agent by appropriate foreclosure proceedings.

(i) This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

5. Upon approval of the Modified Escrow Agreement by the Hearing Officer and establishment of the Modified Escrow Agreement, and continuing until and including the date the Hearing Officer either (1) denies Discount's pending Motion to Require BellSouth to Continue Service Pending Resolution of this Proceeding or (2) authorizes the parties to terminate the Modified Escrow Agreement, Discount shall pay into the Modified Escrow Account at AmSouth Bank established by the parties, the amount of \$2800 each calendar day by 5:00 p.m., with weekend payments being made by consolidated payment on Monday for Saturday and Sunday. No disbursements from the Modified Escrow Account shall be made to BellSouth until ordered by the Hearing Officer.

6. At such time as the Hearing Officer allows disbursements to BellSouth from the Modified Escrow Account, the amounts in the Modified Escrow Account shall be used to pay any and all amounts owed to BellSouth for services rendered. If any amount remains in the escrow fund after such amounts are paid out of the fund, such remaining amounts shall be returned to Discount.

7. Without consenting to BellSouth's right to do so, it is understood by Discount that BellSouth will, after providing the notice set forth below, terminate and disconnect any and all services it provides to Discount if either: (1) Discount fails to make any payments as required by this agreement within the time required by this agreement; or (2) any check submitted by Discount pursuant to this Modified Escrow Account is returned for insufficient funds or otherwise not honored by the financial institution upon which it is drawn. BellSouth agrees to provide at least five days advance written notice to the Hearing Officer and the parties before terminating service.

8. All notices to the parties concerning the Modified Escrow Account should be sent to the following addresses:

Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301
Attorney for BellSouth Telecommunications, Inc.

Henry Walker
Boult, Cummings, Conners & Berry
414 Union Street, Suite 1600
Post Office Box 198062
Nashville, Tennessee 37219
(615) 252-2363
Attorneys for Discount Communications

Respectfully submitted,

BOULT, CUMMINGS, CONNERS &
BERRY, PLC

*Henry Walker by
Joelle Phillips w/ permission*

Henry Walker

414 Union Street, #1600

Post Office Box 198062

Nashville, Tennessee 37219

(615) 252-2363

Attorneys for Discount

Communications

BELLSOUTH TELECOMMUNICATIONS, INC.

Joelle Phillips

Guy M. Hicks

Joelle Phillips

333 Commerce Street, Suite 2101

Nashville, Tennessee 37201-3300

(615) 214-6301

APPROVED:

Honorable Richard J. Collier
Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
Post Office Box 198062
Nashville, Tennessee 37219-8062

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Tim Phillips, Esquire
Consumer Advocate Division
Post Office Box 20207
Nashville, Tennessee 37202

